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## Judiciary Committee

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### HB 1138

**Title:** An act relating to allowing persons with certain medical conditions to access the restroom in a retail establishment.

**Brief Description:** Concerning access to employee restrooms in retail stores.

**Sponsors:** Representatives Liias, Clibborn, Moeller, Green, Cody, Driscoll, Morrell and Pedersen.

#### Brief Summary of Bill

- Requires, under certain conditions, a retail establishment with a restroom facility to provide a customer with a qualifying medical condition access to that facility.
- Prescribes civil penalties for violations.
- Directs the Department of Health to develop a standard electronic form to be used as evidence of the existence of an eligible medical condition or the use of an ostomy device.
- Protects the retail establishment or employee from civil liability where a qualifying customer has been permitted to use a restroom that is ordinarily reserved for employees.

**Hearing Date:** 1/29/09

**Staff:** Kyle Gotchy (786-7119) and Trudes Tango (786-7384)

#### Background:

Inflammatory bowel disease (IBD) encompasses a group of conditions of the small and large intestine. The two main categories of IBD are ulcerative colitis and Crohn's disease, both of which typically cause patients to experience diarrhea and abdominal pain, among other symptoms. There is no known cure for IBD. Although a person with IBD may achieve remission via treatment, he or she will likely experience the occasional, acute resurgence of the

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original symptoms. When a person suffers a resurgence episode he or she will often require the use of a restroom in order to alleviate his or her discomfort.

Severe IBD may require surgery, including a temporary or permanent colostomy or ileostomy. An ostomy refers to a surgically created opening in the body for the discharge of body wastes. An ostomy device is a receptacle used to collect the diverted waste.

Under current public accommodation laws, a retail establishment is not explicitly required to allow a customer access to a non-public restroom. The Human Rights Commission has adopted rules prohibiting a person in the operation of a place of public accommodation from failing to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when ordinary service would prevent the person from fully enjoying the place of public accommodation. Whether an accommodation is "reasonable" is determined on a case-by-case basis. Thus, depending on the unique context of a contemplated retail establishment, it may or may not be reasonable for that establishment to provide safe access to the employee restroom.

Several states, including Illinois, Minnesota, Texas and Maryland, have enacted legislation that requires retail establishments and their employees to grant persons with IBD access to a restroom facility ordinarily reserved for employees.

### **Summary of Bill:**

A retail establishment that has a restroom facility for its employees must allow a customer to use that facility during normal business hours if the restroom facility is reasonably safe and all of the following conditions are met:

1. The customer making the request has an eligible medical condition or uses an ostomy device, and provides evidence of the existence of the medical condition or device in writing;
2. Three or more employees are working at the time of the request; and
3. The retail establishment does not normally make a restroom available to the public.

### Eligible Medical Condition

An eligible medical condition includes Crohn's disease, ulcerative colitis, any other IBD, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a restroom facility.

### Written Evidence

The writing evidencing a qualifying medical condition or device must be in the form of either:

- a signed statement by the customer's health care provider that may be on a form prepared by the Department of Health (DOH); or
- an identification card that is issued by a nonprofit organization that serves individuals who suffer from an eligible medical condition or that use an ostomy device.

### Violations

For a first violation the retail establishment and employee(s) will receive a warning letter providing information about the above requirements from the city or county. For a subsequent violation the retail establishment or employee will be guilty of a civil infraction not to exceed \$100.

#### No Required Physical Changes

A retail establishment is not required to make any physical changes to an employee restroom facility in order to comply with this section.

#### Development of an Electronic Form

The DOH is required to develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical device or use of an ostomy device. The DOH is not required to distribute printed versions of the form.

#### Protection from Liability and Exclusions

A retail establishment or an employee is not civilly liable for any act or omission where a qualifying customer has been permitted to use a restroom that is ordinarily reserved for employees, where the act or omission meets the following:

1. It is not willful or grossly negligent;
2. It occurs in an area of the retail establishment that is not accessible to the public; and
3. It results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

A filling station or service station with a structure of 800 square-feet or less is excluded from the requirements stated herein.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.